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9 || Attorney for Plaintiffs

**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA**

13 MARK AARON HAYNIE, BRENDAN
14 RICAHRDS, THE CALGUNS
15 FOUNDATION, INC., and THE
SECOND AMENDMENT
FOUNDATION, INC..

Plaintiffs.

vs.

19 KAMALA HARRIS, Attorney General
20 of California (in her official capacity),
21 CALIFORNIA DEPARTMENT OF
22 JUSTICE, CITY OF ROHNERT
23 PARK, OFFICER DEAN BECKER
24 (RP134) and DOES 1 TO 20.

23 || Defendants.

Case No.: 3:10-CV-01255 SI
3:11-CV-02493 SI

JOINT CASE MANAGEMENT CONFERENCE STATEMENT

Conference Date: January 13, 2012
Conference Time: 3:00 p.m.
Conference Place: Courtroom 10
450 Golden Gate Ave
San Francisco, CA
94102

Related Case: *Haynie v. Richards*
3:11-CV-05580 SI
CMC set 3/30/2012

1. **Jurisdiction & Service** – The parties stipulate that the Court has subject matter jurisdiction over the plaintiffs's claims and there are no issues regarding personal jurisdiction or venue.

1 2. **Facts** – Mark Haynie was arrested once and Brendan Richards was arrested
 2 twice for violations of California Penal Code § 12280(b)¹ [30605] – possession
 3 of an unregistered assault weapon. In Brendan Richards’ case and with
 4 regard to both arrests, police were in the process of investigating a
 5 disturbance when they discovered several firearms in the trunk of Richards’
 6 car. Based upon the officers’ belief that these firearms violated the California
 7 Assault Weapons Control Act (“AWCA”), Richards was arrested on the spot.
 8 Forensic experts employed by the California Department of Justice, however,
 9 reviewed the weapons and issued opinions that the firearms did not violate
 10 the AWCA. Subsequently, the Sonoma County District Attorney’s Office
 11 dismissed the criminal charges. Defendants City of Rohnert Park and Officer
 12 Dean Becker contend that the arresting officers had probable cause to make
 13 the arrest for violation of the AWCA.

14 3. **Legal Issues** –

- 15 a. Is the California Assault Weapon Statutory (and Regulatory) Scheme
 16 unconstitutionally vague and ambiguous?
- 17 b. Was the constitutionality of the AWCA clearly established law at the
 18 time of Brendan Richards’ arrests?
- 19 c. Do plaintiffs have standing to sue the City of Rohnert Park for
 20 injunctive relief relating to the enforcement of the AWCA? See, *City of*
 21 *Los Angeles v. Lyons*, 461 U.S. 95.
- 22 d. Given the totality of the circumstances known to the arresting officers,
 23 would a reasonably prudent person have concluded that a person in
 24 possession of a firearm similar in most respects to an illegal assault
 25 weapon, yet equipped with a small bullet button, was in violation of
 26 the AWCA? (For probable cause standard, see *Grant v. City of Long*

27
 28 ¹ California has renumbered its Deadly Weapon Statutes effective January 1, 2012. The
 old numbers are cited and the new numbers are bracketed.

Beach, 315 F.3d 1081, 1085.)

e. Was the legality of an assault rifle equipped with a bullet button clearly established law at the time of the arrest?

f. Finally, is California Penal Code § 12031(e) [25850(b)] unconstitutional on its face? Does this statute provide police officers with probable cause to search a vehicle without a warrant? Was the constitutionality of this provision clearly established at the time of the search?

9 4. **Motions** – Defendants California Department of Justice and Kammala
10 Harris filed a Motion to Dismiss which this court granted on October 22,
11 2011. Defendants City of Rohnert Park and Officer Dean Becker filed a
12 Motion to Dismiss on December 23, 2011. While the hearing on that motion
13 is currently set for February 24, the parties have stipulated that the hearing
14 is to be reset to April 20, 2012 to accommodate the introduction of new
15 parties. The parties are awaiting the Court’s order with regard to same.
16 Plaintiffs anticipate filing a Rule 56 Motion.

17 5. **Amendment of Pleadings** – Plaintiffs have already filed an Amended
18 Consolidated Complaint in *Haynie and Richards I*² to address issues raised in
19 this Court’s Order Granting in Part and Denying in Part the Defendant’s
20 Motion to Dismiss. (See Dkt # 42 & 15 respectively.)

21 | P a g e
6. **Evidence Preservation** – Not applicable in this case.

22 7. **Disclosures** – The parties agree to make their Fed.R.Civ.P. 26(f) disclosures
23 60 days after all parties have appeared and all related cases have been
24 noticed and dealt with by the Court.

25 | // /

²⁷ For now, it seems convenient to distinguish the first *Richards* case – consolidated with
²⁸ the *Haynie* case – from the second *Richards* case which is merely related to the first two, by designating them *Richards I* and *Richards II*.

1 8. **Discovery**

2 a. Plaintiffs will take the following discovery.

3 i. Document Request.

4 ii. Interrogatories.

5 iii. Requests for Admission.

6 iv. Depositions.

7 b. Defendants will take the following discovery.

8 i. Document Request.

9 ii. Interrogatories.

10 iii. Requests for Admission.

11 iv. Depositions.

12 9. **Class Action** – Not applicable to this case.

13 10. **Related Case** – *Richards, et al., v. Harris, et al.*, Case No.: 3:11-CV-05580

14 SI. Plaintiffs are aware and have put the defendants on notice that there is a
15 very high probability of a fourth related case that is in the pre-litigation
16 phase at this time. It involves another claim for false arrest and allegedly
17 improper charge of violating Penal Code § 12280(b) [30605]. The arresting
18 agency was Cotati Police Department and the prosecuting agency was the
19 Sonoma County District Attorney's office.

20 11. **Relief** – Plaintiffs seek damages, declaratory and prospective injunctive
21 relief and payment of attorney fees and costs.

22 12. **Settlement & ADR** – The California defendants and plaintiffs have
23 participated in a Joint Neutral Evaluation. The Rohnert Park defendants
24 are willing to participate in settlement negotiations, however, they do not
25 believe that civil damages are available in this case.

26 13. **Consent to Magistrate Judge for All Purposes** – The parties have not
27 consented to a magistrate judge.

28 14. **Other References** – Not applicable in this case.

- 1 15. **Narrowing the Issues** – Plaintiffs would like to discuss procedures for a
 2 bench trial in this matter in conjunction with (or in lieu of) a cross motions
 3 for summary judgment.
- 4 16. **Expedited Schedule** – Not applicable in this case.
- 5 17. **Scheduling** – The parties have already rescheduled the hearing for Rohnert
 6 Park Defendants' Rule 12 Motion to permit it to be consolidated with the
 7 Sonoma County and City of Cotati Defendants. The parties are currently
 8 waiting for the Court's order with regard to same.
- 9 18. **Trial** – As noted above, plaintiffs are prepared to discuss a bench trial in
 10 conjunction with, or in lieu of, a Rule 56 Motion. Should plaintiffs' civil
 11 damages claim proceed beyond motion practice, the City of Rohnert Park and
 12 Officer Dean Becker request a jury trial on those issues. Defendants expect a
 13 five-day trial at this time.
- 14 19. **Disclosure of Non-Party Interest Entities or Persons** – None known at
 15 this time.

16 RESPECTFULLY SUBMITTED.

17 Date: January 3, 2012

18 _____ /s/ _____

19 Ross Moody, Counsel for Defendant

Date: January 3, 2012

_____ /s/ _____

Donald Kilmer, Counsel for Plaintiffs

20 Date: January 3, 2012

21 _____ /s/ _____

22 Robert W. Henkels
 22 County for Defendants
 23 City of Rohnert Park & Becker

24 **ATTESTATION FOR COMPLIANCE WITH GENERAL ORDER 45 AND
 LOCAL RULE VIII.B.**

25 I, Donald Kilmer, declare under penalty of perjury under the laws of California
 26 and the United States that I have in my possession e-mail correspondence from
 27 Ross Moody and Robert Henkels that the content of this document is acceptable to
 all persons required to sign the document. I declare that this document was signed
 in San Jose, CA on January 3, 2012

28 _____ /s/ _____
 Donald Kilmer of
 Attorney for for Plaintiffs